

NTSB Order No. EA-5151

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of March, 2005

Respondent.

7704

Rules of Practice (49 CFR Part 821)³ requires that an appeal from a decision of a law judge be filed within 10 days after the service date of the order.⁴

The time for filing a notice of appeal from the law judge's order expired on October 29. Therefore, respondent's notice was filed 10 days late. Without good cause to excuse a failure to file a timely notice of appeal, or a timely request to file one out of time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988).

On appeal from the law judge's decision, respondent argued that his late appeal should be accepted because: (1) when he received the faxed copy of the law judge's October 19 order, he did not receive the last page containing appeal rights, including time limits; (2) his employment with the Federal Bureau of Investigation (FBI) had resulted in his schedule being "extremely disrupted"; and (3) he had been "focused on" a criminal summons he received⁵ in a separate court action related to his divorce case.

In NTSB Order No. EA-5126, the Board found that none of the factors cited by respondent constituted good cause for his untimely appeal. As explained in that decision, his claim that he did not receive the last page of the fax copy of the law judge's order was not corroborated by the fax transmittal confirmation sheet contained in the docket file, which showed that all 5 pages were successfully transmitted. But even assuming he did not receive the last page of the fax, respondent's argument that he was not given adequate notice of the time limit for appeal would have failed, because the law

³ Section 821.47 provides, in part, as follows:

§ 821.47 Notice of Appeal.

A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served.

⁴ The service date appeared on the face of the order.

⁵ The summons is dated, and was apparently faxed to respondent on, October 8, and required respondent to appear in court on November 8.

judge's order was also mailed to his home address,⁶ in addition to being faxed to his office. He did not claim then, nor does he now, that the mailed copy was also missing the appeal rights page. Further, respondent was also sent a full copy of the Board's rules of practice on September 9, 2004, when his (untimely) appeal and answer from the Administrator's order was docketed.

Regarding respondent's contention that his employment with the FBI should excuse his late filing, the Board's earlier dismissal order noted that he made a similar argument in explaining his late-filed appeal from the Administrator's order of suspension. As stated in the order, the law judge's disposition of his claim in that context was equally applicable there: "[respondent] fails to state, much less document, how his FBI duties prevented him from filing an appeal...Respondent has, thus, not shown that employment-related exigencies rendered him unable to file a timely appeal." Similarly, respondent provided no evidence or persuasive argument to explain how his receipt of the criminal summons in his divorce case rendered him unable to file a timely appeal.

In his petition for reconsideration, respondent adds a fourth basis for his claim that his untimely appeal should be excused. He contends that because "[the] country is currently in a state of war"⁷ and it was not at the time of our decision in Hooper, the policy we announced in that case does not apply to his case. However, as the Administrator points out in her reply brief, respondent has cited no authority to support his apparent position that the country's being "in a state of war" should result in the Board suspending its long-standing precedent and procedural practice of dismissing untimely appeals absent a showing of good cause.

Therefore, we hold that respondent has not established any error in our earlier order dismissing his appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's petition for reconsideration is denied;
- and

⁶ The order was sent by both certified and regular mail. Although the certified mail copy was eventually returned to the Board as "unclaimed," the regular mail copy was not returned, and respondent has not alleged that he did not receive it.

⁷ Respondent refers to both the war on terror and the war in Iraq.

2. The 30-day suspension of respondent's pilot certificate shall begin 30 days after the service date indicated on this order.⁸

ROSENKER, Acting Chairman, and CARMODY, ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above order.

⁸ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 CFR 61.19(g).